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Kevin S. Smith

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BARNES, Judge

Case Summary¹

Harry Roberson appeals his convictions and twenty-year sentence for Class B felony armed robbery and Class A misdemeanor battery resulting in bodily injury. We affirm.

Issues

Roberson raises two issues, which we restate as:

- I. whether there is sufficient evidence to support his convictions; and
- II. whether he was properly sentenced.

Facts

On July 25, 2007, in Anderson, Jim Gaw gave Roberson and his brother, Miguel, a ride. Gaw and the Robersons had an acquaintance in common who arranged the ride. Gaw did not know the Robersons prior to giving them the ride. When the three men arrived at the Robersons' desired location, Miguel got out of Gaw's pick-up truck, and Roberson hit Gaw in the face. Roberson and Gaw struggled in the cab of the truck, and Roberson took Gaw's wallet. Miguel went around to the driver's side of the truck and took Gaw's keys, glasses, and cell phone. The struggle between Gaw and Roberson ended, both men got out of the truck, and Roberson asked Gaw for his watch, which Gaw gave to Roberson. Miguel threw Gaw's keys and glasses back into the truck, and Gaw returned home.

¹ We note that pages 177-202 are missing from the transcript. The absence of these pages does not affect the outcome of this decision.

On July 26, 2007, the State charged Roberson with Class B felony robbery and Class A misdemeanor battery. A bench trial was held, and Roberson was found guilty. The trial court sentenced Roberson to twenty years for the robbery and one year for the battery and ordered the sentences to be served concurrently for a total sentence of twenty years. Roberson now appeals.

Analysis

I. Sufficiency of the Evidence

Roberson argues that there is insufficient evidence to support his convictions. Upon a challenge to the sufficiency of evidence to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses, and we respect the jury's exclusive province to weigh conflicting evidence. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We must consider only the probative evidence and reasonable inferences supporting the verdict. Id. If the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt, we must affirm the conviction. Id.

Roberson does not claim that the State failed to present evidence of one of the elements of robbery or battery. Instead, he claims that it was Miguel who committed the crimes, not him. Here, there is overwhelming evidence that Roberson robbed and battered Gaw. Gaw explicitly testified that Roberson hit him and took his wallet and watch, and Miguel's trial testimony corroborated Gaw's testimony. By pointing to his own self-serving testimony that Miguel committed the robbery and battery and other evidence that is based on events that happened after the offenses were committed,

Roberson is simply asking us to reweigh the evidence. We cannot do that. There is sufficient evidence to support Roberson's convictions.

Roberson also claims that he was denied "due process and a fair trial" when, in his closing argument, the prosecutor suggested that even if the brothers' roles were reversed Roberson could still be found guilty as an accomplice. Appellant's Br. p. 10. It appears that Roberson's argument is based on the State waiting until the end of the trial to suggest that Roberson could also be convicted based on an accomplice liability theory.

It is clear that the State's theory of the case was that Roberson was primarily liable for the commission of the crimes. Nevertheless, as the State points out, the State was permitted to pursue an alternative theory of accomplice liability. See Sanquenetti v. State, 727 N.E.2d 437, 441 (Ind. 2000) ("Under the statute [Indiana Code Section 35-41-2-4], the individual who aids another person in committing a crime is as guilty as the actual perpetrator."); Wise v. State, 719 N.E.2d 1192, 1198 (Ind. 1999) ("Thus, one may be charged as a principal yet convicted on proof that he or she aided another in the commission of a crime."); Hoskins v. State, 441 N.E.2d 419, 425 (Ind. 1982)(stating that jury instructions on accomplice liability were properly given and did "not represent an additional charge nor a new theory in the cause."). In fact, we rejected a similar argument in Ozuna v. State, 703 N.E.2d 1093, 1100 (Ind. Ct. App. 1998), in which we held there is not a notice requirement for purposes of pursuing an accomplice liability theory. Without more, this argument fails.

Further, even if accomplice liability is the basis of Roberson's conviction, there is sufficient evidence to support it. Under accomplice liability, an accomplice is criminally

responsible for all acts committed by the primary actor that are a probable and natural consequence of their concerted action. McGee v. State, 699 N.E.2d 264, 265 (Ind. 1998). The accomplice need not participate in each and every element of the offense to be convicted of it. See id. Although the defendant's mere presence at the scene of the crime is insufficient to establish accomplice liability, his or her presence may be considered along with the defendant's relation to or companionship with the one engaged in the crime and the defendant's actions before, during, and after the crime. Id. at 265-66.

Assuming for the sake of the argument that the brother's roles were reversed, Roberson was not an innocent bystander—during the commission of the offense he would have personally taken Gaw's keys, glasses, and cell phone, and left the scene with the phone. Further, Miguel and Roberson were together before, during, and after the commission of the crimes. Gaw testified that it seemed like the men had a "system" and that the robbery was "pre-planned." Tr. p. 46. This evidence would have been sufficient to support the convictions based on an accomplice liability theory.

II. Sentence

Roberson also argues that his sentence is improper. We engage in a four-step process when evaluating a sentence. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, the trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravators or mitigators, is not subject to appellate review. Id. Fourth, the merits of a

particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

Even if a trial court abuses its discretion by not issuing a reasonably detailed sentencing statement or in its findings or non-findings of aggravators and mitigators, we may choose to review the appropriateness of a sentence under Rule 7(B) instead of remanding to the trial court. See Windhorst v. State, 868 N.E.2d 504, 507 (Ind. 2007). Further, as we recently reiterated, “inappropriate sentence and abuse of discretion claims are to be analyzed separately.” King v. State, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008).

An abuse of discretion in identifying or not identifying aggravators and mitigators occurs if it is “clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” Anglemyer, 868 N.E.2d at 490 (quoting K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)). Additionally, an abuse of discretion occurs if the record does not support the reasons given for imposing a sentence, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Id. at 490-91.

Roberson claims that the trial court erred in not considering three mitigators—namely his employment opportunity, willingness to make restitution, and poor eyesight. On rehearing in Anglemyer v. State, 875 N.E.2d 218, 220-21 (Ind. 2007), our supreme court addressed a similar issue and acknowledged, “an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the

mitigating evidence is not only supported by the record but also that the mitigating evidence is significant.”

At the sentencing hearing, Roberson stated that he had been offered a job with a cleaning service while he was awaiting sentencing, that he would make restitution to Gaw, and that he needed to have cataract surgery on his eye. Simply put, these are not significant mitigators overlooked by the trial court. Roberson has not established that the trial court abused its discretion in sentencing him.

To the extent Roberson challenges the appropriateness of his sentence, we may revise a sentence that is inappropriate in light of the nature of the offense and the character of the offender. See Ind. Appellate Rule 7(B). Although Indiana Appellate Rule 7(B) does not require us to be “extremely” deferential to a trial court’s sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id. Roberson has not met this burden.

As for the nature of the offenses, Gaw was doing Roberson and Miguel a favor by giving them a ride. In exchange for his good deed, Roberson battered and robbed him. As for his character, in addition to blaming Miguel and asking Miguel to take responsibility for these offenses prior to trial, Roberson’s criminal history is extensive. At the sentencing hearing, Roberson admitted that he had seventeen prior convictions, six of which were felony convictions. Roberson has repeatedly demonstrated that he is

unable to lead a law-abiding life. Considering the nature of the offense and the character of the offender, Roberson has not established that his twenty-year sentence is inappropriate.

Conclusion

There is sufficient evidence to support Roberson's convictions, and he was not denied due process when the prosecutor suggested during closing argument that Roberson could be convicted as an accomplice. Roberson has not established that the trial court abused its discretion in sentencing him or that his sentence is inappropriate. We affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.